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OFFICE OF PETITIONS

In re Application of :
Zhang et al. :
Application No. 09/700,236 : **DECISION ON PETITION**
Filed: 05/09/2001 :
Attorney Docket No. 83973/269224 :

This is a decision on the petition under 37 CFR 1.181, filed April 2, 2007, to withdraw the holding of abandonment for the above-identified application.

This application was held abandoned for failure to submit a timely and proper reply to the non-final Office action mailed on December 28, 2005, which set a three-month shortened statutory period for reply. Petitioners obtained an extension of time for response within the third month. The application became abandoned on June 29, 2006. A Notice of Abandonment was mailed on October 6, 2006.

On June 28, 2006, petitioners filed a reply to the non-final Office action in the form of a Request for Continued Examination (RCE) (and fee), a two-page amendment, and a request for an extension of time for response within the third month (and fee). On July 3, 2006, petitioners submitted a copy of their reply, including page 2 of the amendment previously filed on June 28, 2006, which appeared to have been omitted. On September 15, 2006, the Office mailed a Notice of Improper Request for Continued Examination (RCE), which indicated that the RCE filed on July 3, 2006,¹ was improper because continued prosecution under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. The Notice further stated that if the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. On October 6, 2006, the Office mailed a Notice of Abandonment, stating that a reply was received on July 3, 2006, but it did not constitute a proper reply, or a *bona fide* attempt at a proper reply to the non-final rejection.

¹ The Office notes that the RCE and amendment submitted on July 3, 2006, were copies of the response previously filed on June 28, 2006.

On April 2, 2007, petitioners filed the present petition, a copy of the reply in the form of an RCE and a three-page amendment, and a copy of their Acknowledgment Receipt of June 28, 2006.² Petitioners asserted that they filed a timely and proper reply to the non-final Office action on June 28, 2006, as evidenced by the Acknowledgement Receipt. Therefore, petitioners requested that the Office withdraw the holding of abandonment in this application.

A review of the Acknowledgment Receipt reveals that petitioners submitted 6 pages of documents to the USPTO on June 28, 2006, consisting of 2 pages of Transmittal letter, 1 page of RCE, and 3 pages of amendment.³ Although petitioners submitted an improper RCE, the amendment filed on June 28, 2006, is an acceptable and timely reply to the outstanding non-final Office action. Accordingly, the petition to withdraw the holding of abandonment is granted.

The Notice of Abandonment was mailed in error. The application is restored to pending status in view of the fact that a response in the form of a three-page amendment was timely filed and received on June 28, 2006.

As the RCE is improper and will not be entered, the \$395.00 fee will be refunded to the Deposit Account.

The matter is being referred to the Technology Center Art Unit 1722 for consideration of the amendment.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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² The Acknowledgement Receipt establishes the date of receipt by the USPTO of the electronic documents, described by the applicant during the submission process, including count of pages and/or byte sizes for each document. The Acknowledgement Receipt is the electronic equivalent of the postcard receipt described in MPEP 503.

³ After consulting the Examiner, the Examiner has determined that the amendment constitutes a *bona fide* attempt to provide a complete reply to the non-final Office action.